



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

May 10, 2004

Bob Duke  
Watermaster, Water District 34  
P.O. Box 53  
Mackay, ID 83251

VIA FACSIMILE

**Re: Fulfilling Requests for Mitigation pursuant to IDAPA 37.03.12.050**

Dear Mr. Duke:

The purpose of this letter is to provide guidance regarding the mitigation request you received from Jack, L. Vaughn, and Jay V. Jensen, dated April 21, 2004. The Idaho Department of Water Resources (IDWR) received a copy of this mitigation request on April 29, 2004.

The above-mentioned water users have requested mitigation for three water rights pursuant to IDAPA 37.03.12.050 (Rule 50). These water rights have a total maximum diversion rate of 6.53 cfs and have priority dates of June 1, 1883 and June 30, 1883. Two of these water rights have combined limits with ground water rights. The point of diversion for these water rights is the Moore diversion. Historic diversion data from 1959 to 1971 and 1975 to 1983 indicate that water was delivered to the Moore diversion throughout the irrigation season, including the months of September and October, even in the low water years of 1959, 1960, 1961, 1966, 1977, and 1979.

Water District 34 assessments between 1998 and 2003 show that ground water use in the water district increased dramatically from 1998-1999 to 2000-2003. The average annual volume assessed in 1998-1999 was 35,900 AF. The average annual volume assessed in 2000-2003 was 88,800 AF, an increase of 147% from 1998-1999. This is also an increase of 89% from the annual volume estimated in Rule 50.04.c. Because mitigation has not been called for in past years, the procedure for modifying the annual diversion volume specified in Rule 50.04.c has not been followed. The 47,000 AF estimate of ground water withdrawal and the 13% estimated annual depletion described in Rule 50.04.c will thus remain in effect for this year.

Based on Rule 50, there are three options for fulfilling this request for mitigation. The required mitigation may be fulfilled by the water district, individual ground water users, an organization of ground water users, or a combination thereof. IDWR will issue a notice to ground water users informing them of their obligations and options pursuant to this rule.

1. Provide water to the water users who have called for mitigation by augmenting natural flow in the Big Lost River at the point of diversion for the Moore Canal or by adding water to canals or laterals that can be used to deliver water to the applicable places of use (Rule 50.04.c.ii and iii). Flow will need to be augmented by 6.53 cfs on each day during the 2004 irrigation season that water delivery is called for and the natural flow is not otherwise available to fulfill these water rights.
2. Provide 6,110 AF of water to augment natural flow in the Big Lost River system (Rule 50.04.c and 50.04.c.i). This water may be added to the Big Lost River at any point(s) between Mackay Dam and the Moore diversion. The schedule for delivery of the 6,110 AF for flow augmentation is outlined in Rule 50.04.c.i.
3. Submit an alternative mitigation plan(s) (Rule 50.04.e), which identifies actions and measures to prevent or compensate for impacts to diversions by junior ground water users, to the director for consideration pursuant to IDAPA 37.03.11.043. Alternative mitigation plans could include monetary compensation, partial fulfillment of the flow augmentation requirements combined with a partial reduction in ground water use, non-use of wells, or other combinations of actions that prevent or compensate for the impacts.

The Director of IDWR may order curtailment of ground water use pursuant to Rule 40 of the "Rules for Conjunctive Management of Surface and Ground Water Resources," IDAPA 37.03.11 if both of the following occur.

1. The water users who have requested mitigation also file a petition with the director of IDWR requesting curtailment of junior ground water users pursuant to IDAPA 37.03.11.040.
2. The mitigation requirements under IDAPA 37.03.12.050 are not fulfilled by the junior ground water users.

Per Rule 50.04.d, Water District 34 is authorized to acquire water supplies to augment natural flow and add the cost of acquiring mitigation water to the annual assessment of ground water users who do not provide separate augmentation or a separate mitigation plan. If the water district opts to fulfill the mitigation requirement, the water district will need to notify individual ground water users that they will be assessed for mitigation costs, unless they provide separate augmentation or a separate mitigation plan that is acceptable to the director of IDWR.

If the water district opts to fulfill the mitigation requirement, Rule 50.40.d states that the cost would be added to the annual assessment in the same proportion as each ground water user is assessed for the costs of the water district relative to all other ground water users. Thus, if the water district uses a five-year average to calculate annual assessments, a five-year average ground water use would be used to assess for the mitigation costs. If the water district needs to issue a separate assessment prior to the next annual assessment in order to provide funds for acquiring mitigation water, the water district could call a special meeting of the water users to approve a supplemental budget.

If you have any questions regarding this letter please contact me at 208-327-7871 or Tim Luke at 208-327-7864.

Respectfully,

Jennifer Berkey  
Water Distribution Section

cc: Jay V. Jensen  
Jack Jensen  
L. Vaughn Jensen  
Seth Beal, Water District 34 Advisory Board Chairman  
Harvey Walker

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